United Nations A/HRC/32/39

General Assembly

Distr.: General
6 May 2016

Original: English

Human Rights Council
Thirty-second session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on the right to life and the use of force by private security providers in law enforcement contexts

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, submitted pursuant to Council resolution 26/12. In the report, the Special Rapporteur presents a short commentary on the process of updating the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (known as the Minnesota Protocol) and surveys the standards for the use of force by private security providers in law enforcement contexts.

GE.16-07411(E)

1607411

Please recycle

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on the right to life and the use of force by private security providers in law enforcement contexts

Contents

		Page
I.	Activities of the Special Rapporteur	3
	A. Communications	3
	B. Visits	3
	C. Press releases	3
	D. International and national meetings	5
II.	Updating of the Minnesota Protocol	6
III.	Right to life and the use of force by private security providers in law enforcement contexts	6
	A. Privatization of security services	8
	B. International efforts at regulation and oversight	10
	C. General observations on the use of force	11
	D. Duty of precaution as applied to private security providers	12
	E. Operational conduct of private security providers	14
	F. Particular contexts and challenges	15
	G. Monitoring and accountability	17
IV.	Conclusions	20
V.	Recommendations	21

I. Activities of the Special Rapporteur

1. In October 2015, the Special Rapporteur submitted to the General Assembly a report in which he focused on the role of forensic investigations and the application of the death penalty to foreign nationals (A/70/304).

2. In June 2015, the Special Rapporteur presented to the Human Rights Council a thematic report on the use of information and communications technologies to secure the right to life (A/HRC/29/37).

3. On 9 March 2016, jointly with the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur presented to the Human Rights Council, pursuant to its resolution 25/38, a report on the proper management of assemblies (A/HRC/31/66).

4. On 22 March 2016, the Special Rapporteur presented an oral update to the Human Rights Council on the situation of human rights in Burundi in his capacity as a member of the United Nations independent investigation on Burundi, pursuant to Council resolution S-24/1.

A. Communications

5. Observations on the communications sent by the Special Rapporteur between 1 March 2015 and 29 February 2016 and replies received between 1 May 2015 and 30 April 2016 are contained in document A/HRC/32/39/Add.3.

B. Visits

6. From 8 to 18 September 2015, the Special Rapporteur visited Ukraine. His mission report is published as an addendum to the present report (A/HRC/32/39/Add.1).

7. The report in follow-up to the mission undertaken by the Special Rapporteur to Mexico from 22 April to 2 May 2013 is published as an addendum to the present report (A/HRC/32/39/Add.2).

8. From 1 to 8 March 2016, the Special Rapporteur visited Burundi as a member of the United Nations independent investigation on Burundi, pursuant to Human Rights Council resolution S-24/1 adopted on 17 December 2016. He has subsequently been appointed the chair of the investigation.

9. Since the presentation of his previous report to the Human Rights Council in June 2015, the Special Rapporteur has sent country visit requests to the Governments of Israel, Mozambique and the State of Palestine.

10. He thanks the Governments of Honduras, Iraq, Nigeria and the State of Palestine, which have responded positively to his requests, and encourages the Governments of Egypt, Eritrea, the Islamic Republic of Iran, Israel, Mozambique, Pakistan, Rwanda and Sri Lanka to accept his pending requests for a visit.

C. Press releases

11. On 21 April 2015, the Special Rapporteur joined in issuing a statement by special procedure mandate holders on the decision of the Supreme Court of Pakistan to suspend death sentences imposed by military courts.

12. On 29 April 2015, he joined in issuing a statement emphasizing the need to ensure transparency and accountability in the use of drones.

13. On 30 April 2015, he joined in issuing a statement warning about the consequences of pre-election violence in Burundi.

14. On 13 May 2015, he joined in issuing a statement condemning the killing of three bloggers in Bangladesh.

15. On 18 May 2015, he joined in issuing a statement calling for a central role for civil society to guarantee inclusive post-2015 development goals.

16. On 21 May 2015, he joined in issuing a statement welcoming the Indonesian, Malaysian and Thai leaders' decision not to push back migrants and asylum seekers arriving in their territorial waters.

17. On 5 June 2015, he joined in issuing a statement drawing attention to the grave harm climate change poses to the worldwide enjoyment of human rights.

18. On 3 July 2015, he issued a statement urging the Mexican authorities to consider new evidence in the Tlatlaya case.

19. On 16 July 2015, he joined in issuing a statement calling on the Security Council to take action to prevent mass violence in the Great Lakes region.

20. On 7 August 2015, he joined in issuing a statement condemning the killing of the blogger Niloy Neel in Bangladesh.

21. On 27 August 2015, he joined in issuing a statement warning about the increase in violence against journalists and media workers in South Sudan.

22. On 27 August 2015, he joined in issuing a statement calling for increased respect for the rule of law in the context of a genocide trial in Guatemala.

23. On 9 September 2015, he joined in issuing a statement welcoming the report of the Inter-American Commission on Human Rights on disappeared, executed and tortured students in the State of Guerrero in Mexico.

24. On 7 October 2015, on the occasion of World Day against the Death Penalty, he joined in issuing a statement on the use of the death penalty for drug-related crimes.

25. On 13 November 2015, he joined in issuing a statement welcoming the adoption of Security Council resolution 2248 (2015) on Burundi.

26. On 16 November 2015, he joined in issuing a statement expressing deep concern about ongoing bloodletting in the Occupied Palestinian Territory.

27. On 1 December 2015, jointly with other mandate holders, he called on the Turkish authorities to carry out a thorough, independent and transparent investigation into the killing of Tahir Elçi.

28. On 9 December 2015, he joined in issuing a statement on the occasion of the fiftieth anniversary of the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights calling for the implementation of the two treaties.

29. On 21 January 2016, he joined in issuing a statement urging the Government of Ethiopia to halt the violent crackdown on Oromia protesters and ensure accountability for abuses.

30. On 1 March 2016, he joined in issuing a statement welcoming the judgment of two former military officials for crimes against humanity in Guatemala and calling on the authorities to ensure appropriate redress for the victims.

31. On 30 March 2016, he issued a statement on the alleged summary execution of a Palestinian in Hebron by Israeli security forces.

32. On 7 April 2016, the Special Rapporteur joined in issuing a statement welcoming the new Principles and Guidelines on Human Rights while Countering Terrorism in Africa, drafted by the African Commission on Human and Peoples' Rights.

33. During the reporting period, the Special Rapporteur joined in issuing other statements on the death penalty in Chad, China, India, the Islamic Republic of Iran, Pakistan, Saudi Arabia, the United States of America and Zambia.

D. International and national meetings

34. The activities carried out by the Special Rapporteur during the period from 14 April to 14 July 2015 are outlined in his report to the General Assembly at its seventieth session (A/70/304).

35. During the reporting period, pursuant to Council resolution 25/38, along with the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur continued consultations with States and civil society concerning the management of assemblies, in Pretoria (6-7 August 2015), Istanbul, Turkey (27-28 August 2015), and Geneva, Switzerland (22-24 October 2015).

36. On 4 and 5 September 2015, he participated in an experts meeting on a draft general comment on article 4 of the African Charter on Human and Peoples' Rights, organized jointly by his mandate, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the African Commission on Human and Peoples' Rights.

37. On 7 September 2015, he participated in a seminar on investigations during armed conflict, organized by the Geneva Academy of International Humanitarian Law and Human Rights.

38. On 21 October 2015, he visited the Metropolitan Police Specialist Training Centre, in Gravesend, the United Kingdom of Great Britain and Northern Ireland.

39. On 29 October 2015, he participated in a panel event in New York on the revision of the Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

40. On 3 November 2015, he spoke in Banjul at the joint thematic dialogue on sexual orientation and gender identity organized by the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights and the United Nations.

41. On 10 December 2015, he spoke at the launch in Geneva of *The War Report: Armed Conflict in 2014*.

42. On 3 February 2016, he participated in an expert meeting in Geneva on the use of force by corporate entities, aimed at informing the present report.

43. From 4 to 6 February 2016, he convened in Geneva two working groups (legal and forensic) on the revision of the Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

44. On 5 February 2016, he presented an update in Geneva to States on the Minnesota Protocol.

45. On 9 March 2016, he participated in a side event in Geneva during the thirty-first session of the Human Rights Council on the use of force and social protest, organized by the International Network of Civil Liberties Organizations and Amnesty International.

46. On 6 April 2016, he participated in a panel discussion during the fifty-eighth ordinary session of the African Commission on Human and Peoples' Rights in Banjul, launching the Commission's general comment No. 3 on the African Charter on Human and Peoples' Rights: the right to life (art. 4).

47. On 14 April 2016, he spoke about human rights and ethical issues at the meeting in Geneva of experts on lethal autonomous weapons systems, organized by the States parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.

II. Updating of the Minnesota Protocol

48. The Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions is one of the earlier founding documents of the mandate, adopted in 1991. For some time, the document has required updating and supplementing, as highlighted in several resolutions adopted by the Commission on Human Rights and reaffirmed by the Human Rights Council between 1998 and 2010.[1]

49. Given the input he received from many interlocutors during country visits and in thematic exchanges in the conduct of his mandate, the Special Rapporteur approached OHCHR and it was decided that they would collaborate in undertaking an update process.

50. The full process of the update over the previous two years is described in the Special Rapporteur's report A/HRC/32/39/Add.4, and the completed text is presented to the Council therein. The Special Rapporteur hopes that the updated Minnesota Protocol will become a helpful reference for crime scene and forensic experts, as well as other investigators, whose work makes a vital contribution to the protection of the right to life.

III. Right to life and the use of force by private security providers in law enforcement contexts[2]

51. The human rights system cannot be effective in the absence of security and, in some cases, without the use of force. The modern State typically claims a monopoly on the use of force, and as such is also politically responsible and internationally accountable for the force it uses or allows to be used. The power to exercise force is easily abused in any society. To avoid such abuses, those using force need to function within domestic legal frameworks on the use of force that comply with international human rights law and, where applicable, international humanitarian law. In addition, appropriate mechanisms for accountability need to be in place.

52. There is an increasing tendency for States to allow many of their traditional functions to be taken on or taken over by private operators, and security is no exception. Security provision has become a global marketplace, with private security providers

[1] See Commission resolutions 1998/36, 2000/32, 2003/33 and 2005/26 and Council resolutions 10/26 and 15/5.

[2] The Special Rapporteur is grateful for research assistance from Thomas Probert and Josua Loots, and advice from Stuart Maslen and other external reviewers.

guarding shopping malls, residencies and public streets, providing security during demonstrations, running prisons and detention centres, training armed forces and police, performing intelligence assessments and risk analyses, escorting convoys and ships, providing personal security for diplomats, and offering many other services.[3]

53. In previous reports, the Special Rapporteur has developed international standards relating to the use of force by law enforcement officials in the context of assemblies (A/HRC/17/28) and in the context of arrest (A/66/330). He has also reported on the need for proper domestic legislative frameworks on the use of force by the police (A/HRC/26/36). In the present report, he explores the implications of the privatization of security provision for the observance of those standards, and makes recommendations aimed at ensuring that standards protecting the right to life are not diminished through privatization.

54. In the present report, the Special Rapporteur focuses on the private provision of security services in law enforcement contexts. The use of force by private entities in the conduct of hostilities will not be discussed. The Special Rapporteur underlines the fact that the established rules of international humanitarian law about determining a situation as an armed conflict should be used. Not all uses of force in an armed conflict qualify as the conduct of hostilities. For example, the provision of close protection to a businessperson or diplomat in a State that is engaged in armed conflict does not ordinarily amount to direct participation in hostilities, and any use of force in such contexts should be evaluated with reference to domestic and international standards on law enforcement.

55. Throughout the present report, the Special Rapporteur uses the term "private security providers" to describe all those private parties providing security services, regardless of how they define themselves.

56. The provision of private security services on international waters, the use of private security providers to ward off pirates, on deep-water drilling platforms and in other contexts, are not analysed. That complex issue is worthy of a report in its own right.[4]

57. While many major private security providers have their headquarters in Europe and North America, the industry operates and employs people across the globe. G4S, the world's largest private security company, employs more than 623,000 people on six different continents, of whom more than three-fifths are in Asia, the Middle East and Africa.[5] However, although some of the larger private security providers clearly qualify as transnational corporations, a substantial segment of the market is made up of small- or medium-sized private security providers that may not operate internationally.

58. Certain international business and human rights norms may apply irrespective of the size, sector, operational context or ownership structure, including the Guiding Principles on

[3] See R. Abrahamsen and A. Leander, eds., *Routledge Handbook of Private Security Studies* (London and New York, Routledge, 2015). See also H. Born, M. Caparini and E. Cole, "Regulating private security in Europe: status and prospects", Geneva Centre for the Democratic Control of Armed Forces (DCAF), Policy Paper No. 20 (Geneva, DCAF, 2007), pp. 2-3.

[4] See "Counterpiracy under international law", Academy Briefing No. 1 (Geneva, Geneva Academy of International Humanitarian Law and Human Rights, 2012); Alice Priddy, "The use of weapons in counterpiracy operations" in *Weapons under International Human Rights Law*, S. Casey-Maslen, ed., (Cambridge, Cambridge University Press, 2014).

[5] See www.g4s.com/en/Who%20we%20are/Our%20people/Our%20employees/.

Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.[6]

A. Privatization of security services

59. The use of private entities for security or law enforcement is not a new phenomenon. Indeed, there is some evidence to suggest that the modern concept of professional, bureaucratic policing was pioneered by private firms such as the Pinkerton Detective Agency and its competitors during the mid-nineteenth century.[7] However, the private security sector is certainly rapidly expanding.[8] In 2011, the Small Arms Survey conducted a study comparing the number of private security personnel in 70 countries with the number of police officers. Several countries stood out, including Guatemala, with 6 times as many private security personnel as police officers, India, with nearly 5 times as many, South Africa, with more than 2.5 times as many, and the United States of America, with 2.26 times as many.[9]

60. The privatization of State security services has steadily been increasing over recent years, and the establishment of public-private partnerships in the area is not uncommon.[10] There are several arguments supporting the privatization of public functions or services.[11] Security may be privatized where government lacks the capacity either technically or materially to perform its duties, or in certain circumstances it may be cheaper to privatize certain functions than for governments to perform them themselves.[12]

61. Private security services provide some benefits, as far as the protection of life, limb and property is concerned. At the same time the sector presents major challenges. Since States are primarily responsible for human rights fulfilment, the increasing movement toward the privatization of security raises questions as to roles, responsibilities, and ultimately accountability in relation to human rights violations and abuses. The Danish Institute for Human Rights has raised concerns about the trend towards privatization, noting that "the logic of privatization suggests that states can distance themselves from responsibility by simply firing the company in question".[13] Moreover, there is concern that privatization could have a discriminatory impact because poor or marginalized communities cannot afford the private services and are left underprotected.[14]

---

[6] C. Seiberth, *Private Military and Security Companies in International Law* (Cambridge, Intersentia Ltd., 2014), p. 25.

[7] D. Sklansky, "The private police", *University of California Los Angeles Law Review*, vol. 46, No. 4 (April 1999), p. 1182.

[8] See A. Sinha and P. Chatterjee, "Calling security", *Business World* (5 January 2016). Available from http://businessworld.in/article/Calling-Security/05-01-2016-89925/.

[9] See N. Florquin, "A booming business: private security and small arms" Small Arms Survey 2011. Available from www.smallarmssurvey.org/publications/by-type/yearbook/small-arms-survey-2011.html.

[10] M. Mota Prado "Regulatory choices in the privatization of infrastructure" in S. Chesterman and A. Fisher, *Private Security, Public Order: The Outsourcing of Public Services and Its Limits* (Oxford, Oxford University Press, 2009), p. 108.

[11] M. Mota Prado "Regulatory choices in the privatization of infrastructure", p. 109.

[12] International Institute for Strategic Studies, "Complex irregular warfare: the privatisation of force", *The Military Balance*, vol. 106, No. 1 (June 2006), pp. 411-416.

[13] See IRIN, "Private security firms prosper as more migrants detained", 12 March 2014. Available from www.irinnews.org/report/99766/private-security-firms-prosper-as-more-migrants-detained.

[14] See, for example, J. Cavallaro, "The urban poor: problems of access to human rights", paper presented at the sixth annual assembly of the International Council on Human Rights Policy,

62. The right to life has two components: the prevention of arbitrary deprivation of life, and accountability where life may have been arbitrarily deprived. The growth of the private security provider sector brings to the fore the question of whether private security providers adhere to the same standards as public security regarding the use of force, and whether the same level of accountability is in place should there be abuses of power. Concerns about private security providers centre on the level of training for the security guards, vetting procedures and practices in the selection process of employees, their mandates, whether they are issued with weapons and, if so, which ones, the risk of abuse of authority and excessive use of force, the level of professional standards, the adequacy of legal accountability mechanisms, and compliance with existing laws.[15]

63. All States that play a role in the deployment of private security providers, whether home State, host State or contracting State, must contribute to regulating the activities of the private security provider to ensure accountability.[16] The draft articles adopted by the International Law Commission in 2001 on the responsibility of States for internationally wrongful acts identify four instances when the acts of a private entity may be directly attributed to the State: (a) when the private entity is "empowered by the law of that State to exercise elements of the governmental authority … [provided that entity] is acting in that capacity in the particular instance" (art. 5); (b) when the private entity is "acting on the instruction of, or under the direction or control of, that State in carrying out the conduct" (art. 8); (c) when the private entity is "in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority" (art. 9); and (d) when a "State … acknowledges and adopts the conduct in question as its own" (art. 11).

64. When private security providers are tasked by the State to perform protective functions or other forms of law enforcement, and empowered to use force in that capacity, the State remains primarily responsible for their compliance with international human rights law.[17] However, in practice, the uncertainties that can arise in a transnational context concerning regulation of public-private partnerships often result in an accountability deficit.[18]

65. The State has a duty to respect and protect human rights, including the public's rights to bodily integrity: the rights to life, bodily security and the right to be free from cruel, inhuman or degrading treatment or punishment. In order to achieve that goal there is an obligation on the State to install regulative and legislative frameworks that protect the human rights of those under its jurisdiction or control. When it comes to the regulation of private security providers, the State has a duty to provide a regulative framework that ensures that private security providers act in a manner respectful of human rights, and are held accountable in instances in which they do not, regardless of whether the contracting

---

Guadalajara, January 2003, paras. 20-23. See also Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights* (2009), paras. 70-73. Available from www.cidh.oas.org/countryrep/Seguridad.eng/CitizenSecurity.IV.htm.

[15] United Nations Office on Drugs and Crime, *State Regulation concerning Civilian Private Security Services and their Contribution to Crime Prevention and Community Safety* (Vienna, United Nations, 2014), p. 21.

[16] O. De Schutter, "The responsibility of States", in *Private Security, Public Order*, p. 26.

[17] The Special Rapporteur notes that this was the position taken by the two rapporteurs of the Human Rights Committee in preparing draft general comment No. 36 on the right to life in September 2015.

[18] Michael Likosky "The privatization of violence" in *Private Security, Public Order*, p. 16.

party is the State itself.[19] Given the context in which private security providers often work, it is important to underline that those responsibilities can also apply extraterritorially.[20]

B. International efforts at regulation and oversight

66. A great many mechanisms now exist at the international level aimed at regulating or monitoring the actions of private security providers. Meanwhile, an emerging regime of soft law regulations and codes of conduct are aimed at improving oversight, control and accountability in the sector, especially for those working in so-called "complex environments", areas experiencing or recovering from unrest or instability, where the rule of law has been substantially undermined, and in which the capacity of the State authority is diminished or non-existent.

67. The Voluntary Principles on Security and Human Rights were established in 2000 to guide companies in maintaining the safety and security of their operations. The principles are limited to the extractive industries and energy sectors, but apply to private security providers insofar as they provide services for such corporations. Among the voluntary principles on private security conduct is the principle that private security entities should act in a lawful manner and should exercise restraint and caution in a manner consistent with applicable international guidelines regarding the local use of force, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials, as well as with emerging best practices developed by companies, civil society and governments.

68. The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination was established in 2005. Its mandate included monitoring and studying the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights, and preparing draft international basic principles that encouraged respect for human rights on the part of those companies in their activities. After developing a draft international convention on the regulation of private military and security companies, the Working Group has been conducting a global assessment, on a regional basis, of national laws and regulations relating to such companies (see A/HRC/24/45, A/HRC/27/50 and A/HRC/30/34).

69. The draft convention on private military and security companies was presented in 2010, at which time the Council established an open-ended intergovernmental working group to consider the possibility of developing an international regulatory framework, including the option of drafting a legally binding instrument on the regulation, monitoring and oversight of private military and security companies. The working group has discussed gaps in the current regulatory framework because very few States have specific legislation on such companies. Efforts to ensure regulation through voluntary self-regulatory mechanisms are still being rolled out (see A/HRC/WG.10/3/2, para. 52).The working group is currently exploring both a legally binding instrument for private military and security companies and considering a range of other options, including international standard-setting and developing guidelines (A/HRC/30/47).

70. In a separate initiative, the Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and

[19] See Guiding Principles on Business and Human Rights, principle 2.

[20] B. S. Buckland and A. M. Burdzy, *Progress and Opportunities: Challenges and Recommendations for Montreux Document Participants*, 2nd ed. (Geneva, Geneva Centre for the Democratic Control of Armed Forces, 2015), pp. 23-25.

security companies during armed conflict was adopted in 2008. It focuses on situations of armed conflict, but can be of broader use, and supports States in their efforts to ensure that such companies comply with international human rights and humanitarian law. It does not create any new legal obligations, and is not necessarily a step towards a new treaty; rather, it serves as a guiding document. Part two of the document identifies good practices aimed at guiding States in the regulation of private military and security companies. As at May 2016, 53 States and 3 international organizations had expressed support for the Montreux Document.[21]

71. Another voluntary initiative was the development of the International Code of Conduct for Private Security Service Providers, a multi-stakeholder initiative aimed at establishing principles and standards for the provision of private security services. In September 2013, it also established an external independent governance and oversight mechanism, the International Code of Conduct for Private Security Service Providers' Association, with the aim of improving accountability in the sector. Its membership has three independent pillars: private security providers, States and intergovernmental organizations, and civil society. The core functions of the Association are the certification of member companies, monitoring and assessment of compliance with the Code itself, and receiving and handling complaints. It enables reviews and follow-up on corporate performance, and can also provide an avenue for third party complaints, although at present that opportunity is very limited as the Association does not have the necessary resources to investigate complaints. The Code applies primarily to the activities of member private security providers in complex environments. However, it is also relevant to other stakeholders in terms of defining expectations and performance standards in relation to contracting policies and practices.

C. General observations on the use of force

72. With respect to the use of force, where they provide detail, those frameworks tend to defer to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials. The Basic Principles, in accordance with the definition provided in the commentary to the Code of Conduct, are designed to provide standards for use of force by all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

73. However, the Basic Principles do not apply directly to the personnel of private security companies, who do not have official law enforcement powers, unless they have, exceptionally, received such powers from the competent authorities. In particular, they do not apply to private security personnel working for private companies, since they are not carrying out State functions.[22]

74. The remainder of the present report, however, turns to the question of whether there are specificities relating to the use of force by private security providers in that context, and whether the same standards can be adapted for private security providers operating on behalf of another private corporation. When not in the exceptional circumstance of working directly for the State, private security personnel have the same legal rights and responsibilities as ordinary citizens, but the level of their organization, their asserted

[21] See www.mdforum.ch/en/participants.

[22] Amnesty International, *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (Amsterdam, Amnesty International, 2015), p. 14.

expertise, and their preparedness to use force, all suggest that their conduct, particularly whether any use of force is reasonable and not excessive, should be judged more strictly.

75. As is the case for State agents, before and during any use of force by private security personnel, all reasonable precautionary steps to protect life and prevent excessive violence must be taken, including the provision of appropriate equipment and training, the proscription of inappropriate weapons, and careful planning of individual operations. States must adopt a clear legislative framework for the use of force by law enforcement or other individuals that complies with international standards, including the principles of necessity and proportionality. The intentional lethal use of force by law enforcement officials or others must be prohibited unless it is strictly unavoidable in order to protect life, making it proportionate, and all other means are insufficient to achieve that objective, making it necessary. After any use of force there should be some form of review, with a full investigation wherever life has been lost or serious injury inflicted, and accountability mechanisms in place where such an investigation suggests the use of force may have been unlawful, including remedies for victims.

76. As noted above, where States choose to devolve some of their responsibilities for the provision of security to private entities, it is clear that those actions are attributable to the State, and that at least the same restrictions apply to private security providers operating in such a context as would apply to State law enforcement personnel. In the sections that follow the Special Rapporteur turns to situations in which the standards are perhaps less authoritative, but, he argues, must remain normatively identical, if practically distinct.

D. Duty of precaution as applied to private security providers

77. In many cases, once a situation arises in which the use of force is considered, it is already too late to prevent force needing to be used. In order to save lives, all possible measures should be taken "upstream" to avoid situations in which force needs to be used, or to ensure that if force is required, the damage is contained as much as is possible. A failure to take proper precautions in such contexts, where life is at risk, constitutes a violation of the right to life (see A/HRC/26/36, paras. 63 and 64).

78. The precautionary principle is now well established for State law enforcement, although it has different content to the analogous principle in international humanitarian law.[23] In the present section, the Special Rapporteur identifies the many analogous responsibilities that private security personnel have, and by implication the responsibilities that other entities, including States, have to ensure that standards are met.

79. Those responsible for the use of force by any entity must ensure that personnel receive proper training, including in "less-lethal techniques". The Working Group on mercenaries reported that, even when countries had regulations on training of private security personnel, they almost never included any training on human rights (see A/HRC/27/50, paras. 17 and 47). Seeking certification from a recognized body to ensure and demonstrate compliance with established standards will contribute to the adherence of private security providers to the precautionary principle.

80. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials require that governments and law enforcement agencies develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. The Principles

[23] See International Committee of the Red Cross, "The use of force in law enforcement operations" (2015). Available from www.icrc.org/en/document/use-force-law-enforcement-operations.

also stipulate that, for the same purpose, it should be possible for law enforcement officials to be equipped with self-defensive equipment. Not only should the equipment be used if available, as required by necessity, but such equipment should be made available in the first place. States should also ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force (see A/HRC/26/36, para. 52). The same requirements should be made of private security providers, including specialized equipment or training for the particular contexts in which their personnel may work.

81. According to the United Nations Office on Drugs and Crime (UNODC), a significant number of States worldwide allow civilian private security personnel to be armed with firearms or other potentially lethal weapons. The use and regulation of weapons in that context also varies greatly, ranging from situations where 2 per cent of private security providers are estimated to be armed in countries like Croatia, India and Sweden, to instances where 80 per cent are armed in the Dominican Republic, and 85 per cent in Colombia.[24] The importance of strict regulation of possession and use of firearms is self-evident. This requires registration of weapons at the level of the company, and also with respect to the individual responsible. Moreover, there should be adequate regulations in place to ensure that firearms are stored in secure places and that they are well controlled by the company.[25] It is of great concern that, where private security personnel are permitted to carry firearms, their training in safe and effective use of such weapons is not standardized or, in many cases, regulated at all. Even when legal requirements exist regarding the vetting and training of private security personnel, they often merely indicate that the provider is responsible for ensuring that employees are properly trained.[26]

82. The potential consequence of insufficient weapons training was highlighted in December 2015 in Pakistan, when a private security guard accidentally discharged his weapon inside a multinational bank, killing one of the bank personnel and wounding another.[27] Moreover, the risks of allowing private security personnel to carry and potentially use weapons when off-duty were illustrated when a security guard employed by GardaWorld shot and killed two men in a fast-food restaurant in Canada during his break in January 2015.[28]

83. However, as noted above, fatal abuses do not occur only in situations where private security providers are armed or weapons are used. In 2004, a 15-year-old boy died in a youth prison in the United Kingdom after being restrained by private security guards.[29] In

[24] UNODC, *State Regulation concerning Civilian Private Security Services and their Contribution to Crime Prevention and Community Safety* (2014), p. 43. Available from www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Ebook0.pdf.

[25] Born, Caparini and Cole, "Regulating private security in Europe" (see footnote 3 above), p. 27.

[26] Florquin, "A booming business: private security and small arms" (see footnote 9 above), pp. 123-124.

[27] See M. Raja, "No weapons training: Bank staffer dies after guard's gun goes off 'accidentally'", *Express Tribune*, 18 December 2015. Available from http://tribune.com.pk/story/1011999/no-weapons-training-bank-staffer-dies-after-guards-gun-goes-off-accidentally/.

[28] See J. Edmiston, "Toronto police won't charge security guard who shot and killed two men at Danforth McDonald's", *National Post*, 15 July 2015. Available from http://news.nationalpost.com/news/toronto-police-wont-charge-security-guard-who-shot-and-killed-two-men-at-danforth-mcdonalds.

[29] See C. Sambrook, "G4S guard fatally restrains 15 year old – gets promoted", *Open Democracy*, 22 July 2013. Available from www.opendemocracy.net/ourkingdom/clare-sambrook/g4s-guard-fatally-restrains-15-year-old-gets-promoted. See also BBC News, "Criticism over youth jail death", 28 June 2007. Available from http://news.bbc.co.uk/1/hi/england/6250406.stm.

2010, an Angolan deportee died of a heart attack after being restrained by three security guards.[30] In both cases, the detainees reportedly shouted that they could not breathe.

84. The responsibility to plan an appropriate operational response to an emerging situation applies as clearly to private security providers as it does to State law enforcement. However, in the case of private security providers there exists an additional potential precautionary step, namely to call upon the State's law enforcement personnel. In circumstances where private security providers resort to force having turned down an opportunity to defer to the State's police, their full compliance with the requirements of precaution would be called into question. In circumstances where help from authorities was forthcoming, private security providers can no longer justify the use of force under the principle of self-defence or defence of others.

85. Unless directly contracted by the State to do so, which is itself problematic, the contractual responsibility of private security providers in the context of assemblies is not to facilitate the right to freedom of peaceful assembly, but rather to protect the property or personnel of the contracting party. The protection of the rights and safety of the public more broadly remains the duty and function of the State. Private security providers should defer to properly trained and equipped specialist law enforcement units wherever possible.

E. Operational conduct of private security providers

86. The two standards generally applied at the instant of an operation or exchange of force are necessity and proportionality. In the present section, the Special Rapporteur considers whether there are particularities to the application of those standards to the use of force by private security providers.

87. Necessity is a factual cause and effect assessment that evaluates whether force should be used at all, and if so, how much force is actually unavoidable in order to achieve the desired outcome. The requirement of necessity raises the question of whether the threat could not be averted by resort to less harmful means and, thus, implies a graduated approach to the use of force. Therefore, any use of force can be regarded as necessary only when it constitutes the least harmful means available at the time that can be expected to achieve the desired outcome.

88. The proportionality requirement relates to the question of whether the benefit expected to result from the use of force, that is, neutralizing a threat, justifies the harm likely to be caused by it. While establishing necessity requires a factual cause-and-effect assessment, demanding that the least harmful means be used to achieve a desired effect, proportionality entails a value judgment that balances harm and benefit, demanding that the harm that might result from the use of force is proportionate and justifiable in relation to the expected benefit.

89. As far as the right to life is concerned, the proportionality requirement demands that the use of firearms is permissible only if the purpose is to protect another life from a threat, and is sometimes called the "protect life principle". The use of lethal or potentially lethal force to protect property or assert State authority does not meet the proportionality requirement.

90. Given that they are cumulative requirements, proportionality can place a ceiling on the level of force that may be considered necessary, and vice versa. For example, it may be

[30] See BBC News, "Jimmy Mubenga: Deportee shouted 'you're killing me'", 4 November 2014. Available from www.bbc.com/news/uk-england-london-29902375.

"necessary" to shoot a fleeing thief if that is the only way to stop him or her from escaping, in an objective cause-and-effect assessment. However, thus injuring the thief would not be "proportionate", because it would amount to an excessively harmful means of stopping a comparatively minor crime (a value judgment).

91. In some jurisdictions, such as the United States, every citizen, including private security personnel, has the right to make an arrest in certain circumstances. However, importantly, a citizen's arrest must always be made at the arrester's own risk: if the arrest proves unlawful, the arrester is subject to criminal or civil liability. In all circumstances, the amount of force that can lawfully be used in making an arrest largely depends on the type of offence, but the general rule is that force cannot exceed the extent of resistance offered.

92. On account of their organized character, and the training that, as a matter of regulation, they must have received, those using force as part of a private security provider should be subjected to stricter scrutiny than other members of the public as to whether they have met the legal standards. In that context, the Special Rapporteur is concerned that the existence of Stand Your Ground laws can give licence for private security providers and other essentially private entities to seek out confrontation where safe retreat is a viable option, and as such are not in accordance with the precautionary principle (see, for example, CCPR/C/USA/CO/4, para. 10).

93. That organizational characteristic implies that those high up a chain of command or authority, including those not present at the event in question, can potentially be held accountable for use of force by private security personnel. The different level and mechanisms of accountability for such abuses are discussed below.

F. Particular contexts and challenges

94. Having discussed the nature of the standards that can be applied to private security providers in a law enforcement setting, in the present section the Special Rapporteur addresses certain contexts in which the use of force by private security providers can be particularly problematic.

1. Private security providers and detention

95. States are increasingly making use of private security providers as part of their correctional services. A 2013 report found that in at least 11 countries, there was some form of prison privatization, with detention services provided by private security providers for 8 per cent of the prison population in the United States and 19 per cent in Australia.[31]

96. In 2001, the Bureau of Justice Assistance of the United States identified the use of force as a potential reason not to privatize detention facilities, owing to the uncertainties around the deprivation of liberty and the preservation of the rights of inmates when private entities are involved.[32]

[31] See C. Mason, *International growth trends in prison privatization* (Washington, DC, The Sentencing Project, 2013). Available from http://sentencingproject.org/doc/publications/inc_International%20Growth%20Trends%20in%20Prison%20Privatization.pdf.

[32] See J. Austin and G. Coventry, "Emerging issues on privatized prisons", Bureau of Justice Assistance, February 2001. Available from www.ncjrs.gov/pdffiles1/bja/181249.pdf.

97. In a recent incident in the United Kingdom, at a juvenile detention centre managed by G4S, private security personnel improperly used force on several of the young inmates.[33] Undercover film footage appears to show that the guards tried to conceal their behaviour by ensuring that the incidents took place in areas where the surveillance equipment in the detention centre could not film them. That raises concerns about potential undocumented and underreported abuses of the same nature. Following the incident, the Chief Inspector of Prisons of the United Kingdom announced that all prison officers dealing with children should wear cameras in order to monitor behaviour.[34]

98. In 2015, in Australia a bill was tabled before Parliament giving Serco, a private security company contracted by the Australian Department of Immigration and Border Protection to run the country's immigration detention facilities, greater discretion and power to use force in the management of the facilities. The Australian Human Rights Commission raised concerns, citing several incidents about which it had received complaints in relation to the conduct of private security providers in the management of detention centres.[35] As part of their responses to the significantly higher flow of refugees into Europe over the previous year, several European States have also been making use of public-private partnerships to manage temporary asylum facilities. In September 2014, the German press published images exposing abuse in one such facility, raising questions about how staff had been recruited and trained.[36]

99. In the context of detention it is worth re-emphasizing that any serious injury or death that occurs in custody merits a full investigation. When the State deprives an individual of liberty, its control of the situation, directly or indirectly, yields a heightened level of responsibility to protect that individual's rights. That includes a positive obligation to protect all detained persons from violence, as well as to provide food, water, adequate ventilation, an environment free from disease, and adequate health care.[37] Where a person dies or suffers serious injury in custody, there is a presumption of State responsibility, and the burden of proof rests upon the State to prove otherwise through a prompt, impartial, thorough and transparent investigation carried out by an independent body.[38]

---

[33] See BBC News, "G4S Medway young offenders centre staff suspended over abuse claims", 8 January 2016. Available from www.bbc.com/news/uk-england-kent-35260927.

[34] See D. Barrett, "All child jailers should have body-worn cameras after G4S Medway scandal, says watchdog", *Telegraph*, 26 January 2016. Available from www.telegraph.co.uk/news/uknews/law-and-order/12121948/All-child-jailers-should-have-body-worn-cameras-after-G4S-Medway-scandal-says-watchdog.html.

[35] See Australian Human Rights Commission, "Use of force in immigration detention facilities", August 2015. Available from www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/use-force-immigration-detention-facilities.

[36] See "Asylum seekers abused in German shelter by security contractors", *Deutsche Welle*, 28 September 2014. Available from www.dw.com/en/asylum-seekers-abused-in-german-shelter-by-security-contractors/a-17960732. See also "Systemic shame", *Der Spiegel*, 6 October 2014. Available from www.spiegel.de/international/germany/abuse-case-reveals-terrible-state-of-refugee-homes-in-germany-a-995537.html.

[37] See African Commission on Human and Peoples' Rights, "General comment No. 3 on the African Charter on Human and Peoples' Rights: the right to life (article 4)", 2015, para. 36.

[38] See African Commission on Human and Peoples' Rights, "General comment No. 3", para. 37. See also the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rule 71, and African Commission on Human and Peoples' Rights, Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines), paras. 20-21.

2. Impact on the State's duty to provide security

100. In its study of regulatory frameworks for private security providers (A/HRC/27/50), the Working Group on the use of mercenaries noted that in some cases legislation explicitly prevents private security providers from performing policing functions. For example, in the Democratic Republic of the Congo, private security providers are permitted to provide protection to persons and property insofar as they do not replace the police, but they are prohibited from patrolling, arresting, carrying and using firearms, special devices and any other material normally reserved for the military and the police. Similar provisions are contained in the laws of Morocco and Tunisia.

101. However, there also appear to be instances, as the Special Rapporteur observed in Papua New Guinea, in which private security personnel significantly outnumber the police, and as a result, in some circumstances, start de facto to take on some of the core responsibilities of the police with respect to protection (see A/HRC/29/37/Add.1). Such a situation could become particularly problematic where, as noted above, there are differing accountability frameworks for the two groups.

102. To the extent that the provision of security by private security providers supplements that provided by the State, it ought to increase overall levels of security, and therefore protection of the right to life. However, States should guard against reinforcing any trend towards discriminatory security, to which private security providers may contribute.

3. Private use of private security providers

103. There are several contexts in the corporate sector where the overlap between private and public can be problematic, such as mass labour protests or disputes, or other mass gatherings taking place on or around private property, where the corporation involved may choose to employ a private security provider for security provision. As noted above in the context of assemblies, or other activities that take place on the border of public and private, either physically or conceptually, it is important to bear in mind that private security providers have a very different mandate and set of priorities to the police. As such, the police should be called in whenever uncertainties exist with regard to private and public interests, especially concerning the use of force in such contexts.

104. A further level of complexity is added when a private corporation employs security guards, sometimes using a recognized private security provider to recruit the personnel, but the private corporation itself is a company of a different type, such as an extractive industry. It is important to underline that the standards described above with respect to training, equipment, or the use of force apply to all security personnel, regardless of the main function of the company employing them. In circumstances in which a recognized private security provider has been used to recruit staff, there can also be confusion about the chain of command and decision-making, the clarity of which is an important element of precaution. The use of certified security providers can contribute to greater precaution in that regard.

G. Monitoring and accountability

105. Accountability processes when a violation has potentially occurred represent a vital part of the protection of the right to life. With respect to a globalized and transnational industry such as the private security sector, it is important to ensure that accountability exists at the international and domestic (judicial) levels, and at the internal (company) level.

1. Monitoring the use of force

106. Often the first step in any process of accountability is effective monitoring of levels of use of force. That necessary step remains sadly incomplete in many contexts with respect to the use of force by State law enforcement. However it is even less complete in the case of the use of force by private security providers. That data gap fundamentally undermines the work of national and international efforts to ensure accountability for human rights abuses.

107. In order for any organization that uses or potentially uses force for the purpose of security provision demonstrably to respect the right to life, there must be a system of mandatory reporting of all incidents involving the use of firearms, all deaths, and any serious injuries.[39] It is good practice that such a system also requires mandatory reporting of potentially lethal incidents.

2. Accountability under international law

108. While States play the primary role in international law, particularly with regard to law-making and international legal responsibility, and while the regulation and scrutiny of the private security sector may primarily be a question for domestic law, that does not mean there can be no international element.[40] International human rights law does not exclusively govern the conduct of States; it has been variously confirmed that it is the nature of the conduct, and not the entity, that will determine whether or not international human rights law is applicable.[41]

109. Against the backdrop of uncertainty around the exact role that corporations play in the international legal context, there is consensus that corporations should at the very least respect human rights.[42] There is increasing support for the view that non-State collective entities have a binding obligation to obey *jus cogens* and not to engage in conduct amounting to international crimes (see, for example, A/HRC/19/69, para. 106). Along with that come links between human rights and corporate social responsibility, which incentivizes companies to take into account principles that include human rights, labour, the environment and anti-corruption.

110. Under current best practice, unlawful conduct on the part of private security providers is addressed either directly through international corporate social responsibility frameworks and voluntary, self-regulatory codes of conduct aimed at implementing the corporate responsibility to respect human rights, or by holding States accountable where they fail to provide realistic options to hold private security providers and individual personnel accountable under domestic civil and criminal law.

111. Of the voluntary frameworks perhaps most notable is the International Code of Conduct for Private Security Service Providers, which seeks to facilitate access to remedy through the creation of its independent governance and oversight mechanism, as well as the

---

[39] See the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principles 6, 11(f) and 22.

[40] R. Steinhardt, "Weapons and the human rights responsibilities of multinational corporations", in *Weapons Under International Human Rights Law*, S. Casey-Maslen, ed. (Cambridge, Cambridge University Press, 2014), pp. 509 and 513-514.

[41] *Kadic v. Karadzic*, 70 F.3d 232 (United States Court of Appeals, Second Circuit, 1995), cert. denied 518 US 1005 (1996); *Sosa v. Alvarez-Machain*, 542 US 692 725 (2004), p. 748.

[42] N. Pillay "The corporate responsibility to respect: a human rights milestone", *International Labour and Social Policy Review* (Geneva, 2009), pp. 63-68.

forthcoming complaints process.[43] Whether or not the complaints procedure of the International Code of Conduct for Private Security Service Providers' Association will be able to provide effective access to remedies for victims of human rights abuse by private security providers remains to be seen.

3. Accountability under domestic law

112. Human rights abuses perpetrated by private security personnel can be redressed under criminal law and, in some instances, as part of tort law or the law of delict. That can raise questions regarding the legal personality of companies and the different doctrines applied when establishing corporate liability. Some States, such as the United Kingdom, have explicitly codified corporate criminal liability, while others rely on general tort law and the law of delict to institute civil claims.

113. Nothing should detract from the pursuit of personal criminal liability of the individual perpetrator of the abuse. However, vice versa, the fact that sufficient evidence cannot be gathered to prove a criminal act does not mean that an abuse has not occurred.

114. In certain circumstances the concept of vicarious criminal liability can be helpful. A corporation can be criminally responsible for conduct, distinct from the owners, agents or employees of the corporation. The application of vicarious liability transfers the criminal responsibility for an offence from an agent or employee to the corporation itself, while the agent or employee remains responsible for the crime committed. Essential elements of corporate criminal liability include a special relationship between the agent or employee and the corporation (namely, employment) and the requirement that the crime must have been committed in the performance of duties in terms of that relationship. Attention must also be given to considerations of the liability of parent companies for abuses committed by their subsidiaries.[44]

115. It should be noted that, given the inherent risks of abuse of rights associated with security work, close attention should be paid to the trigger of liability concerned. It can be argued that private security providers should be held to a modified standard of strict liability as might be expected from a company, for example, handling hazardous waste. Laws should not grant a company the right to exculpate itself from intentional or grossly negligent excessive force resulting in death or serious injury, even if the company can show that the employee concerned was appropriately selected and trained. Without that standard of liability, victims will often have no effective recourse, as the individual perpetrator is often devoid of means.

116. Since many private security providers operate on a global level, the extraterritorial applicability of human rights law, and specifically human rights treaties, is crucial to the regulation of the sector. In the context of business, extraterritorial jurisdiction has in one way or another made its way into a number of policy domains that include anti-corruption, securities regulation, environmental protection and more general civil and criminal jurisdictions, but not in relation to business and human rights (see A/HRC/14/27, para. 46).[45] However, international law does not prevent States from extending their jurisdiction

[43] The processes put in place for the reporting, monitoring and assessment of members' performance in accordance with the code of conduct were established under article 12 of the Association.

[44] See G. Skinner, "Parent company accountability: ensuring justice for human rights violations" (International Corporate Accountability Roundtable, November 2015). Available from http://icar.ngo/wp-content/uploads/2015/06/PCAP-Report-2015.pdf.

[45] See J. Zerk, "Extraterritorial jurisdiction: lessons for the business and human rights sphere from six regulatory areas", Corporate Social Responsibility Initiative Working Paper No. 59 (Cambridge, MA,

to include such issues, provided there is a recognized basis. Moreover, the Guiding Principles on Business and Human Rights highlight that there are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially when the State itself is involved in or supports those businesses. The reasons include ensuring predictability for business enterprises by providing coherent and consistent messages, and preserving the State's own reputation.[46] While the extraterritorial scope of a prominent national example, the Alien Tort Statute in the United States, has recently been limited, there are a number of other potential avenues, such as in the European Union, that allow for extraterritorial claims to be pursued against corporations for human rights abuses.[47]

4. Internal accountability mechanisms

117. As part of the due diligence aspect of the Guiding Principles on Business and Human Rights, companies are encouraged to set up internal grievance mechanisms, also referred to in some instances as "operational-level" or "project-level" grievance mechanisms. The mechanisms are usually set up to allow those that are affected by the actions of the company to bring allegations of non-compliance with internal policies and procedures to the attention of the company. Several of the voluntary initiatives, including the International Code of Conduct for Private Security Service Providers, also require companies to set up internal grievance mechanisms to monitor compliance with the principles of the initiatives, considered to be external unless incorporated into those of the company.[48] Notwithstanding the potential of internal grievance mechanisms to offer another course of redress to victims of corporate human rights abuse, the functioning of those mechanisms has met with great scepticism in the ranks of civil society.

118. Most internal grievance mechanisms currently require claimants to sign a legal waiver that keeps victims from pursuing further legal action.[49] While the use of such grievance mechanisms has produced some successes in particular circumstances, human rights abuses of certain magnitudes, including violations of the right to life, cannot be adequately addressed through an internal grievance mechanism, and in such cases legal waivers can represent a deliberate impediment to accountability.

IV. Conclusions

119. **The use of force by private security providers is not uncommon, and can be a necessary element to some of the services they provide. However, the unregulated or improper use of force by such providers can severely jeopardize the protection of the right to life. Where the use of force by private security providers is regulated under the domestic laws and regulations of States that specifically concern private security,**

John F. Kennedy School of Government, Harvard University, 2010). Available from www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_59_zerk.pdf.

[46] See Guiding Principles on Business and Human Rights, principle 2.

[47] J. Kirshner, "A call for the EU to assume jurisdiction over extraterritorial corporate human rights abuses", *Northwestern Journal of International Human Rights*, vol. 13, No. 1 (2015), pp. 1-26.

[48] See International Code of Conduct for Private Security Service Providers, article 66.

[49] See "Rape victims must sign away rights to get remedy from Barrick", *MiningWatch* (30 January 2013). Available from http://miningwatch.ca/news/2013/1/30/rape-victims-must-sign-away-rights-get-remedy-barrick. See also K. McVeigh, "Canada mining firm compensates Papua New Guinea women after alleged rapes", *Guardian*, 3 April 2015. Available from www.theguardian.com/world/2015/apr/03/canada-barrick-gold-mining-compensates-papua-new-guinea-women-rape.

there is a need to ensure that those laws are in line with international human rights standards and best practice regarding the use of force. More generally, private security providers must be subject to oversight and accountability from the State.

120. Where States directly contract security services from a private security provider, the standards and level of the State's responsibility for the actions of its agents must remain unaffected. Where private corporations or individuals contract a private security provider, or where corporations provide their own security, the standards remain effectively the same, a fact that should be clarified by national legislation. States must impose on private security providers and their personnel a duty of precaution concerning recruitment, training, equipment, planning, command and control, and reporting. Moreover, in circumstances they assess as likely to require the use of force, private security personnel have a responsibility to inform State law enforcement, and to follow any instructions they are given.

121. It is vital that States, the security industry and civil society all take steps to address the data gap with respect to lethal incidents relating to the use of force by both State law enforcement and private security personnel. Without reliable information about the use of force by all entities potentially involved it will be difficult for States and the international community to assess the impact of the privatization of security on the full realization of the right to life by all, without discrimination.

V. Recommendations

Recommendation to the United Nations

122. The Human Rights Council should continue to pay significant attention to the impact of private security providers on a broad range of human rights, including the right to life, and to underline the important principle that the outsourcing of security provision must in no way lower standards of protection.

Recommendation to regional human rights mechanisms

123. Where they do not already exist, regional human rights mechanisms should consider establishing forums or frameworks to allow greater scrutiny of the activities of the security sector in the regional context.

Recommendations to States

124. States should keep registers of and issue licenses to private security providers operating within their borders, or domiciled within their territory and operating across borders, that have demonstrated compliance with requirements established by legislation.

125. States should actively participate in and engage with international organizations and multilateral and multi-stakeholder processes aimed at improving the monitoring and regulation of private security provider activities.

126. States should, where necessary, engage in a process of legal and policy reform to achieve the following:

(a) Clarify the responsibilities of private security providers in relation to human rights when operating both locally and abroad, particularly when the private security provider is registered or domiciled within its territory;

(b) Require that all private security providers have vetting and training procedures that include human rights norms and principles;

(c) **Require that appropriate weapons training is mandatory for all private security personnel;**

(d) **Implement strict gun control regulations with regard to private security personnel, both on and off duty;**

(e) **Require private security providers based or operating within their territory to bring company policies in line with international norms and standards;**

(f) **Implement a system of mandatory reporting of lethal incidents, whether caused by State law enforcement or private security personnel and, where one does not already exist, establish a transparent system for collecting, analysing and publishing the data thus generated;**

(g) **Pass or amend laws to ensure that private security personnel who are found to have used excessive force are criminally accountable and that, in such circumstances, the private security provider itself is held to a standard of strict vicarious liability that ensures victims receive compensation;**

(h) **Clarify their responsibilities in monitoring effectively the use of force by private security providers and providing access to remedy for victims of corporate human rights abuses, particularly in cross-border operations, and ensure that there are no barriers to access to remedy for victims of corporate human rights abuse, both procedurally and in relation to legal bases.**

127. **Where the State itself is directly contracting security services from a private security provider, it must conduct due diligence with respect to the private security provider's human rights record, and pay particular attention to procedures and equipment relating to the use of force; States should also engage robust mechanisms to monitor the performance of the private security provider in that regard.**

Recommendations to private security providers

128. **All private security providers should operate in a transparent fashion and publish reports on their activities; they should conduct investigations into allegations of human rights abuses in a transparent and thorough manner.**

129. **In particular, private security providers should record and publish data on incidents involving the use of force by their personnel.**

130. **All private security providers should actively participate in and engage with initiatives aimed at fostering respect for human rights among their personnel, including awareness-raising and capacity-building; private security providers are encouraged to align internal policies with international human rights norms and standards, and to put in place the protocols necessary.**

131. **All private security providers must engage in vetting and training exercises that include a human rights-based approach; they should monitor the use and safekeeping of weapons by both on and off-duty personnel. They should implement oversight and monitoring mechanisms, especially in relation to the use of force by their personnel.**

132. **While private security providers should set up internal grievance mechanisms for injured parties of misconduct or negligence on the part of the provider, such mechanisms should not be used to address serious abuses of human rights, including violations of the right to life, and must not require applicants to waive their right to seek a judicial remedy where applicable.**

133. **All private security providers should actively participate in and engage with international multi-stakeholder initiatives aimed at improving the human rights performance of the security sector.**

Recommendations to corporations contracting private security providers

134. **The provision of security, especially in circumstances where the use of force is a likely component of its provision, requires particular skill sets and hundreds of hours of training. Any non-State entity providing that service must be able to demonstrate that its personnel have been properly vetted, trained and equipped.**

135. **When tendering a contract for security services, corporations should require that the private security providers they contract abide fully with national regulations regarding private security, and give weight to accreditation by international certifying bodies. They must also exercise due diligence in monitoring the private security providers' activities once contracted to ensure respect for international human rights standards.**

136. **Contracting corporations must in no way impede oversight of private security providers they contract by external bodies, either during routine conduct or, particularly, during the investigation of alleged abuses.**

Recommendations to civil society organizations and academia

137. **Consider innovative ways in which civil society can help to fill the data gap concerning the incidence of the use of force both by State security personnel and private security providers, while at the same time encouraging the State to fulfil its obligations in that regard.**

138. **Scholars should consider how the outsourcing of security creates discriminatory hierarchies of public security that adversely affect human rights, and whether those hierarchies amount in practice to a failure of the State in its duty to protect the right to life of all of its citizens.**